

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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TEOFILO COLON,

Plaintiff,

**08 CV 03142**

- against -

**ANSWER**

CITY OF NEW YORK, DEPARTMENT OF  
CORRECTION COMMISSIONER, MARTIN F. HORN,  
PRISON HEALTH SERVICES, INC., MICHAEL  
CATALANO, C.E.O. OF PRISON HEALTH SERVICES,  
INC., DOHMH MEDICAL DIRECTOR TREVOR  
PARKS, DOHMH PROGRAM DIRECTOR REBECCA  
PINNEY, DOHMH DEPUTY COMMISSIONER LOUISE  
COHEN, DOHMH MEDICAL DIRECTOR DOCTOR  
BENJAMIN OKONTA, DR. PRAVIN RANJAN, DR.  
JEAN RICHARD, DR. DIAH DOUGLAS, DR. LISA  
NASON, DR. MICHAEL HALL, "JOHN DOE"  
MEDICAL PROVIDERS PRISON HEALTH SERVICES,

**TRIAL BY JURY  
DEMANDED**

Defendants.

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Defendant JEAN RICHARD, M.D., s/h/a "DR. JEAN RICHARD," by his  
attorneys, HEIDELL, PITTONI, MURPHY & BACH, LLP, Of Counsel to MICHAEL A.  
CARDOZO, ESQ., Corporation Counsel of the City of New York, upon information and belief,  
answers the complaint herein as follows:

**AS AND TO THE SECTION DESIGNATED PRELIMINARY STATEMENT**

FIRST: Denies the allegations contained in the paragraphs of the complaint  
designated "1" through "3" insofar as the allegations pertain to the answering defendant and  
otherwise denies knowledge or information sufficient to form a belief as to these paragraphs and  
begs leave to refer all questions of law to the court and all questions of fact to the trier thereof.

**AS AND TO THE SECTION DESIGNATED JURISDICTION**

SECOND: Denies the allegations contained in the paragraphs of the complaint designated "4" through "6" insofar as the allegations pertain to the answering defendant and otherwise denies knowledge or information sufficient to form a belief as to these allegations and begs leave to refer all questions of law to the court and all questions of fact to the trier thereof.

**AS AND TO THE SECTION DESIGNATED PARTIES**

THIRD: Denies knowledge or information sufficient to form a belief as to the allegations contained in the paragraphs of the complaint designated "7" through "10," and "16" through "20" and otherwise begs leave to refer all questions of law to the court and all questions of fact to the trier thereof.

FOURTH: Denies the allegations contained in the paragraphs of the complaint designated "15" and "21" insofar as the allegations pertain to the answering defendant, except admits that the answering defendant was and still is a physician duly licensed to practice in the State of New York and otherwise begs leave to refer all questions of law to the court and all questions of fact to the trier thereof.

**AS AND TO THE SECTION DESIGNATED NOTICE OF CLAIM**

FIFTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in the paragraph of the complaint designated "22."

**AS AND TO THE SECTION DESIGNATED CERTIFICATE OF MERIT**

SIXTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in the paragraph of the complaint designated "23."

**AS AND TO THE SECTION DESIGNATED JOINT LIABILITY**

SEVENTH: Denies the allegations contained in the paragraph of the complaint designated "24."

**AS AND TO THE SECTION DESIGNATED EXHAUSTION OF REMEDIES**

EIGHTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in the paragraphs of the complaint designated "25" through "27."

**AS AND TO THE SECTION DESIGNATED FACTUAL ALLEGATIONS**

NINTH: Denies the allegations contained in the paragraphs of the complaint designated "28" through "37" insofar as the allegations pertain to the answering defendant and otherwise denies knowledge or information sufficient to form a belief as to these allegations and begs leave to refer all questions of law to the court and all questions of fact to the trier thereof.

**AS AND TO THE SECTION DESIGNATED DAMAGES**

TENTH: Denies the allegations contained in the paragraph of the complaint designated "38" insofar as the allegations pertain to the answering defendant and otherwise denies knowledge or information sufficient to form a belief as to these allegations and begs leave to refer all questions of law to the court and all questions of fact to the trier thereof.

**AS AND TO THE FIRST CAUSE OF ACTION**

ELEVENTH: Answering the paragraph of the complaint designated "39," defendant repeats and realleges each and every denial and admission in answer to the paragraphs of the complaint designated "1" through "38" with the same force and effect as if herein set forth at length.

TWELFTH: Denies the allegations contained in the paragraphs of the complaint designated "40" and "41" insofar as the allegations pertain to the answering defendant and otherwise denies knowledge or information sufficient to form a belief as to these allegations and begs leave to refer all questions of law to the court and all questions of fact to the trier thereof.

**AS AND TO THE SECOND CAUSE OF ACTION**

THIRTEENTH: Answering the paragraph of the complaint designated "42," defendant repeats and realleges each and every denial and admission in answer to the paragraphs of the complaint designated "1" through "41" with the same force and effect as if herein set forth at length.

FOURTEENTH: Denies the allegations contained in the paragraphs of the complaint designated "43" through "49" insofar as the allegations pertain to the answering defendant and otherwise denies knowledge or information sufficient to form a belief as to these allegations and begs leave to refer all questions of law to the court and all questions of fact to the trier thereof.

**AS AND TO THE THIRD CAUSE OF ACTION**

FIFTEENTH: Answering the paragraph of the complaint designated "50," defendant repeats and realleges each and every denial and admission in answer to the paragraphs of the complaint designated "1" through "49" with the same force and effect as if herein set forth at length.

SIXTEENTH: Denies the allegations contained in the paragraphs of the complaint designated "51" through "53" insofar as the allegations pertain to the answering defendant and otherwise denies knowledge or information sufficient to form a belief as to these allegations and begs leave to refer all questions of law to the court and all questions of fact to the trier thereof.

**AS AND TO THE FOURTH CAUSE OF ACTION**

SEVENTEENTH: Answering the paragraph of the complaint designated "54," defendant repeats and realleges each and every denial and admission in answer to the paragraphs

of the complaint designated "1" through "53" with the same force and effect as if herein set forth at length.

EIGHTEENTH: Denies the allegations contained in the paragraphs of the complaint designated "55" and "56" insofar as the allegations pertain to the answering defendant and otherwise denies knowledge or information sufficient to form a belief as to these allegations and begs leave to refer all questions of law to the court and all questions of fact to the trier thereof.

**AS AND TO THE FIFTH CAUSE OF ACTION**

NINETEENTH: Answering the paragraph of the complaint designated "57," defendant repeats and realleges each and every denial and admission in answer to the paragraphs of the complaint designated "1" through "56" with the same force and effect as if herein set forth at length.

TWENTIETH: Denies the allegations contained in the paragraphs of the complaint designated "58" through "61" insofar as the allegations pertain to the answering defendant and otherwise denies knowledge or information sufficient to form a belief as to these allegations and begs leave to refer all questions of law to the court and all questions of fact to the trier thereof.

**AS AND TO THE SIXTH CAUSE OF ACTION**

TWENTY-FIRST: Answering the paragraph of the complaint designated "62," defendant repeats and realleges each and every denial and admission in answer to the paragraphs of the complaint designated "1" through "61" with the same force and effect as if herein set forth at length.

TWENTY-SECOND: Denies the allegations contained in the paragraphs of the complaint designated "63" through "66" insofar as the allegations pertain to the answering

defendant and otherwise denies knowledge or information sufficient to form a belief as to these allegations and begs leave to refer all questions of law to the court and all questions of fact to the trier thereof.

**AS AND TO THE SEVENTH CAUSE OF ACTION**

TWENTY-THIRD: Answering the paragraph of the complaint designated "67," defendant repeats and realleges each and every denial and admission in answer to the paragraphs of the complaint designated "1" through "66" with the same force and effect as if herein set forth at length.

TWENTY-FOURTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in the paragraphs of the complaint designated "68" through "71."

**AS AND TO THE EIGHTH CAUSE OF ACTION**

TWENTY-FIFTH: Answering the paragraph of the complaint designated "72," defendant repeats and realleges each and every denial and admission in answer to the paragraphs of the complaint designated "1" through "71" with the same force and effect as if herein set forth at length.

TWENTY-SIXTH: Denies knowledge or information sufficient to form a belief as to the allegations contained in the paragraphs of the complaint designated "73" and "74."

**AS AND TO THE TENTH CAUSE OF ACTION**

TWENTY-SEVENTH: Answering the paragraph of the complaint designated "75," defendant repeats and realleges each and every denial and admission in answer to the paragraphs of the complaint designated "1" through "74" with the same force and effect as if herein set forth at length.

TWENTY-EIGHTH: Denies the allegations contained in the paragraphs of the complaint designated "76" and "77" insofar as the allegations pertain to the answering defendant and otherwise denies knowledge or information sufficient to form a belief as to these allegations and begs leave to refer all questions of law to the court and all questions of fact to the trier thereof.

**AS AND TO THE ELEVENTH CAUSE OF ACTION**

TWENTY-NINTH: Denies the allegations contained in the paragraphs of the complaint designated "78" and "79" insofar as the allegations pertain to the answering defendant and otherwise denies knowledge or information sufficient to form a belief as to these allegations and begs leave to refer all questions of law to the court and all questions of fact to the trier thereof.

**FOR A FIRST DEFENSE**

THIRTIETH: That whatever damages may have been sustained at the time and place alleged in the complaint by plaintiff were caused, in whole or in part, by the culpable conduct of plaintiff and without any negligence on the part of defendant. Damages, if any, are to be diminished proportionally to the culpable conduct of the plaintiff.

**FOR A SECOND DEFENSE**

THIRTY-FIRST: That the equitable share of liability, if any, of defendant JEAN RICHARD, M.D. s/h/a "DR. JEAN RICHARD," shall be determined pursuant to the provisions of Article 16 of the CPLR.

**FOR A THIRD DEFENSE**

THIRTY-SECOND: That one or more of the causes of action in the complaint fail to state a cause of action upon which relief may be granted.

**FOR A FOURTH DEFENSE**

THIRTY-THIRD: The amount of alleged damages claimed by plaintiff should be reduced pursuant to CPLR § 4545 to the extent of any collateral source benefits, remuneration or compensation received.

**FOR A FIFTH DEFENSE**

THIRTY-FOURTH: That defendant denies that it is liable in any way to plaintiff under any legal theory because of the doctrine of immunity, whether qualified, sovereign, statutory or otherwise.

**FOR A SIXTH DEFENSE**

THIRTY-FIFTH: That plaintiff is not entitled to recover damages in this action under 42 U.S.C. §1983.

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**FOR A SEVENTH DEFENSE**

THIRTY-SIXTH: Plaintiff may not properly assert a cause of action against the answering defendant for violation of 42 U.S.C. §1983.

**FOR A EIGHTH DEFENSE**

THIRTY-SEVENTH: That the occurrence alleged in plaintiff's complaint was caused, contributed to and brought about, in whole or in part, by the conduct of persons over whom this defendant exercised no supervision or control, including the plaintiff, such conduct amounting to contributory negligence, and the damages and injuries otherwise recoverable by plaintiff, if any, should be diminished in proportion to which such person(s)' conduct bears to the conduct which caused plaintiff's injuries and damages, if any, pursuant to the decisional and statutory laws of the State of New York and the United States in such cases made and provided.

**FOR A NINTH DEFENSE**

THIRTY-EIGHTH: That this defendant alleges and states that plaintiff's claim for relief is barred, because plaintiff and plaintiff's representatives assumed the risk and were fully cognizant of any and all circumstances surrounding the events that gave rise to this action.

**FOR A TENTH DEFENSE**

THIRTY-NINTH: That this defendant alleges and states that there were intervening and superseding acts and occurrences over which it had no control and which caused any claimed injuries of plaintiff.

**FOR A ELEVENTH DEFENSE**

FORTIETH: That this defendant reserves the right to amend his answer and/or affirmative defenses that may be determined applicable in the future by discovery in this matter.

**FOR A TWELFTH DEFENSE**

FORTY-FIRST: That this defendant denies any and all allegations of plaintiff's complaint not specifically admitted herein.

WHEREFORE, defendant JEAN RICHARD, M.D., s/h/a "DR. JEAN RICHARD," demands judgment dismissing the complaint herein, together with the costs and disbursements of this action.

Dated: New York, New York  
May 30, 2008

Respectfully submitted,

HEIDELL, PITTONI, MURPHY & BACH, LLP  
Of Counsel to MICHAEL A. CARDOZO, ESQ.,  
Corporation Counsel of the City of New York

By: Gillian C. Thomas

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